

No. 13679

United States
Court of Appeals
For the Ninth Circuit.

JAMES EDWARD BROWN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the United States District Court for the
Western District of Washington,
Northern Division.

JUL 14 1953

PAUL P. O'BRIEN
CLERK



No. 13679

United States
Court of Appeals
For the Ninth Circuit.

JAMES EDWARD BROWN,

Appellant,

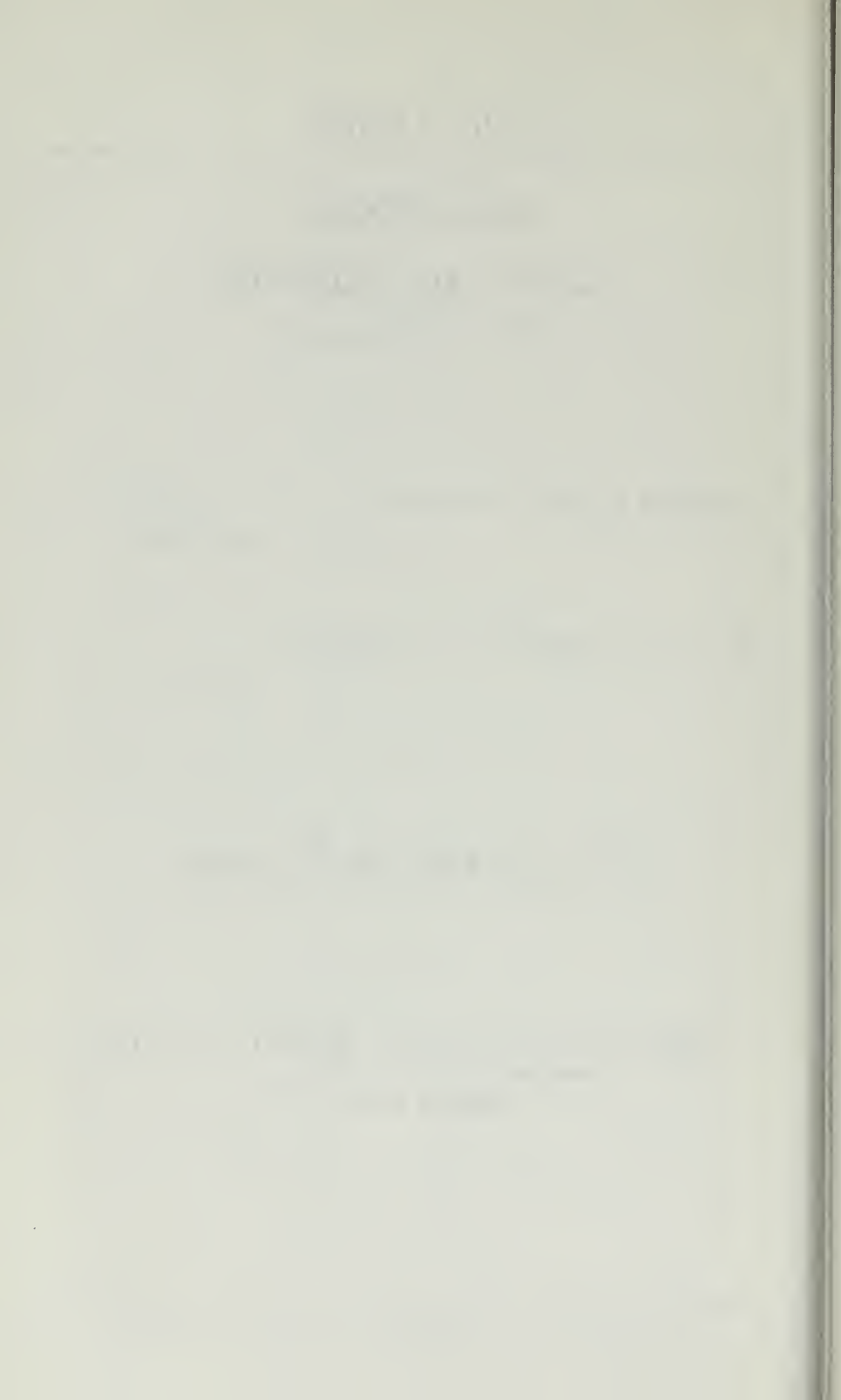
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF COUNSEL

JAMES EDWARD BROWN,

Appellant, per se.

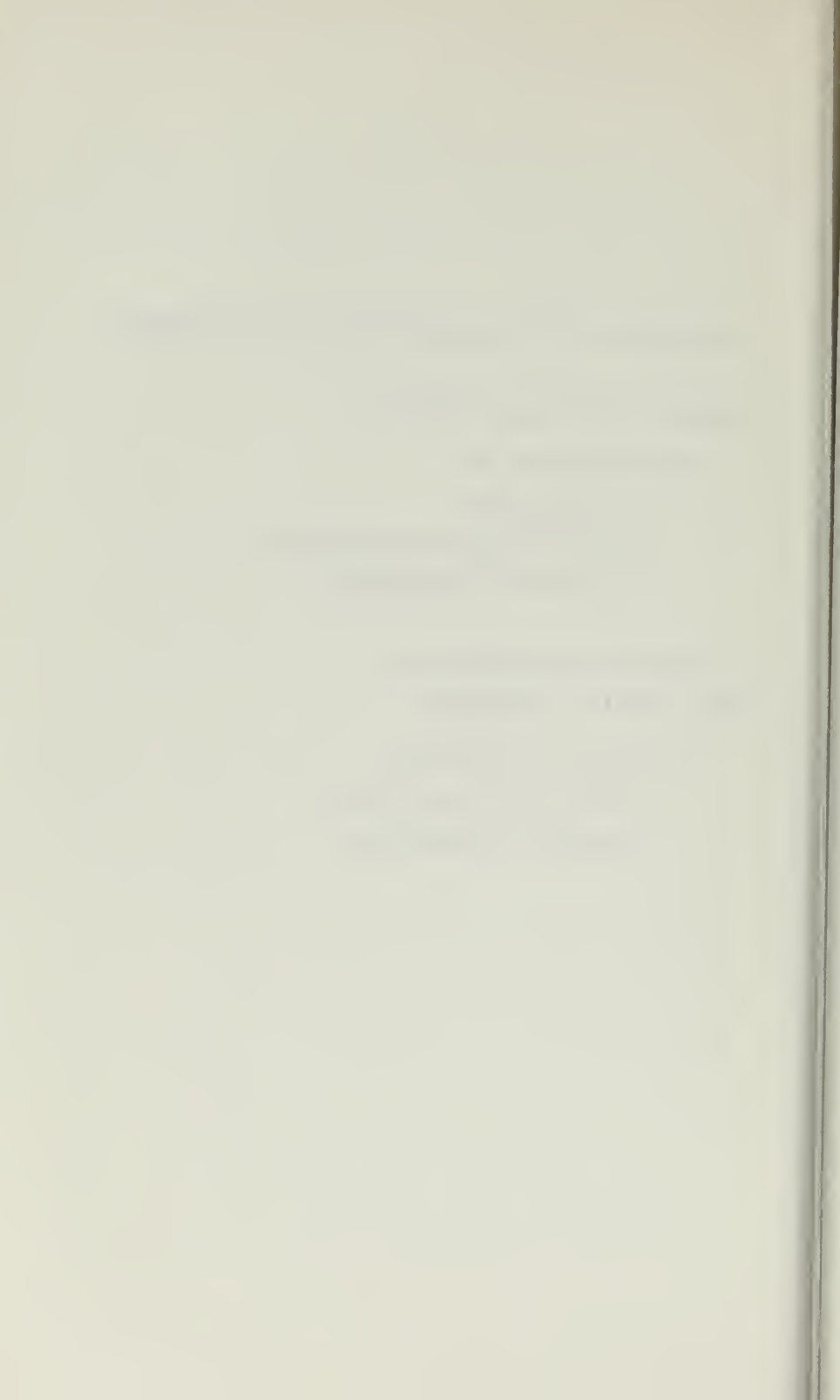
Lock Box 500,
McNeil Island Penitentiary,
Steilacoom, Washington.

J. CHARLES DENNIS and

RICHARD D. HARRIS,

Attorneys for Appellee,

1017 U. S. Court House,
Seattle 4, Washington.



United States District Court, Western District
of Washington, Northern Division

No. 48568

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES EDWARD BROWN,

Defendant.

INDICTMENT

The Grand Jury charges:

Count I.

That on or about August 15, 1952, James Edward Brown did knowingly and unlawfully transport in interstate commerce, to wit, from Seattle, in the Northern Division of the Western District of Washington, to San Francisco, State of California, Della Mae Gilyard and Doris Ann Murray, female persons, for the purpose of prostitution, debauchery and other immoral purposes.

All in violation of Title 18, U.S.C., Section 2421.

A True Bill.

/s/ S. CALDERHEAD,
Foreman.

/s/ J. CHARLES DENNIS,
United States Attorney.

/s/ RICHARD D. HARRIS,
Asst. United States Attorney.

[Endorsed]: Filed September 26, 1952.

[Title of District Court and Cause.]

WARRANT FOR ARREST OF DEFENDANT

To any United States Marshal or any other authorized officer:

You are hereby commanded to arrest James Edward Brown and bring him forthwith before the District Court of the United States for the Western District of Washington in the city of Seattle, to answer to an Indictment charging him with

Did transport female persons, interstate commerce, for the purpose of prostitution, and other immoral purposes.

in violation of T 18, U.S.C., Sec. 2421.

Bail \$7,500.00.

Date Sept. 26, 1952.

[Seal] MILLARD P. THOMAS,
Clerk.

By /s/ SHELDON ELLIS,
Deputy Clerk.

Marshal's Return—received and executed Sept. 29, 1952.

[Endorsed]: Filed October 9, 1952.

[Title of District Court and Cause.]

MOTION TO HAVE U. S. MARSHAL SERVE
DEFENDANT'S WITNESSES WITH SUB-
POENAS

Comes now R. P. Guimont, attorney for defendant, James Edward Brown, and moves the court for an order requiring the U. S. Marshal to serve subpoenas on the following-named witnesses: Mrs. Odean, Room 39 at 2017½ 1st Ave., Byron Hotel, Seattle, Wash.; FBI Agent Bush, Federal Reserve Bank Bldg., Seattle, Wash.; Boyd Miles, 921-14th Ave., Seattle, Wash.; Sgt. Richardson, Fort Lawton, Wash., and Sharon Mae Wiley, 522 Mead St., Seattle, Wash., at the expense of the United States of America for and on the grounds that the defendant, James Edward Brown, has no funds with which to pay the costs or attorney fees in his defense and is a pauper. This motion is based upon the following affidavit.

/s/ R. P. GUIMONT,
Attorney for Defendant.

State of Washington,
County of King—ss.

R. P. Guimont, being first duly sworn on oath, deposes and says:

That on October 17, 1952, he was appointed by the Hon. John C. Bowen of the above-entitled court to defend the defendant, James Edward Brown. That affiant has been unable to obtain any funds from the defendant with which to maintain his

defense and the said James Edward Brown is without any funds on his person or in the custody of the U. S. Marshal with which to defray any expenses of his defense.

Further affiant sayeth not.

/s/ R. P. GUIMONT.

Subscribed and sworn to before me this 20th day of October, 1952.

[Seal] /s/ MERLIN K. BURGESS,
Notary Public in and for the State of Washington,
Residing at Seattle.

[Endorsed]: Filed October 21, 1952.

[Title of District Court and Cause.]

ORDER

This Matter having come on for hearing upon the motion of the defendant for an order requiring the issuance of subpoenas at the expense of the United States of Amercia, and the court being fully advised in the premises,

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed that the Clerk of the U. S. District Court be and is hereby ordered to issue subpoenas to Mrs. Odean, Room 39 at 2017½ 1st Ave., Byron Hotel, Seattle, Wash.; FBI Agent Bush, Federal Reserve Bank Bldg., Seattle, Wash.; Boyd Miles, 921-14th Ave., Seattle, Wash.; Sgt. Richardson,

Fort Lawton, Wash., and Sharon Mae Wiley, 522 Mead St., Seattle, Wash., for them to be and appear as witnesses on behalf of the defendant, James Edward Brown, on the 28th day of October, 1952, at 2:00 p.m., at Room 710, U. S. Courthouse, Seattle, Washington, to be then and there a witness in the above-entitled cause, and the U. S. Marshal be and is hereby ordered to have said subpoenas served upon the parties therein named at the expense of the United States of America.

Done in Open Court this 21st day of October, 1952.

/s/ JOHN C. BOWEN,
Judge.

Approved and Presented by:

/s/ R. P. GUIMONT.

/s/ RICHARD D. HARRIS,
Asst. U. S. Atty.

[Endorsed]: Filed October 21, 1952.

[Title of District Court and Cause.]

MOTION FOR ORDER DIRECTING ISSU-
ANCE OF WRIT OF HABEAS CORPUS
AD TESTIFICANDUM

Comes now the plaintiff by J. Charles Dennis, United States Attorney, and Richard D. Harris, Assistant United States Attorney for the Western District of Washington, and moves the above-en-

titled Court for an order directingg the Clerk of the said Court to issue a Writ of Habeas Corpus Ad Testificandum directed to the Chief of Police, Tacoma, Washington, to produce before the above-entitled Court on the 29th day of October, 1952, the body of Willie Mae Braxton, alias Willie Mae Brown, for the purpose of testifying on behalf of the Government in the above-entitled cause.

This motion is based upon the records and files herein and upon the attached affidavit of Richard D. Harris, Assistant United States Attorney.

/s/ J. CHARLES DENNIS,
United States Attorney.

/s/ RICHARD D. HARRIS,
Assistant United States At-
torney.

United States of America,
Western District of Washington,
Northern Division—ss.

Richard D. Harris, being first duly sworn, on oath deposes and says:

That he is an Assistant United States Attorney for the Western District of Washington and as such makes this affidavit on behalf of the United States of America, plaintiff herein.

That Willie Mae Braxton, alias Willie Mae Brown, is now incarcerated as a prisoner in the City Jail at Tacoma, Washington; that it will be necessary to have said Willie Mae Braxton, alias Willie Mae Brown, present to testify as a witness

on certain material facts at the trial of the above-mentioned case before this Court on October 29, 1952.

[Seal] /s/ RICHARD D. HARRIS.

Subscribed and sworn to before me this 24th day of October, 1952.

 /s/ LEE L. BRUFF,
Deputy Clerk, U. S. District Court, Western District of Washington.

[Endorsed]: Filed October 24, 1952.

[Title of District Court and Cause.]

ORDER DIRECTING ISSUANCE OF WRIT
OF HABEAS CORPUS AD TESTIFI-
CANDUM

Upon motion of the United States Attorney in the above-entitled cause for an order of this Court directing the issuance of a Writ of Habeas Corpus Ad Testificandum, requiring the Chief of Police, Tacoma, Washington, to produce the body of Willie Mae Braxton, alias Willie Mae Brown, on the 29th day of October, 1952, for the purpose of testifying on behalf of the Government in the above-entitled cause; and the Court being duly advised in the premises, Now, therefore,

It Is Hereby Ordered that the Clerk of this Court prepare and issue in the manner prescribed

by law, a Writ of Habeas Corpus Ad Testificandum directed to the Chief of Police, Tacoma, Washington, requiring him to deliver the said Willie Mae Braxton, alias Willie Mae Brown, who is now an inmate of the City Jail, Tacoma, Washington, on October 29, 1952, to the United States Marshal for the Western District of Washington, who is hereby ordered to produce her before the above Court at Seattle, Washington, October 29, 1952, at 9:30 a.m., to testify herein, and the Marshal is ordered to redeliver the custody of said Willie Mae Braxton, alias Willie Mae Brown, to the Chief of Police, Tacoma, Washington, when said Willie Mae Braxton, alias Willie Mae Brown, is discharged as a witness herein, and the United States Marshal is hereby authorized to incur the necessary expenses connected therewith, as provided by law.

Done in Open Court this 24th day of October, 1952.

/s/ JOHN C. BOWEN,
United States District Judge.

Presented by:

/s/ RICHARD D. HARRIS,
Asst. United States Attorney.

[Endorsed]: Filed October 24, 1952.

[Title of District Court and Cause.]

DEFENDANT'S REQUESTED
INSTRUCTIONS

Presented by :

/s/ R. P. GUIMONT,
Attorney for Defendant.

Instruction No.—

You are instructed that before the defendant can be convicted of the crime charged herein, you must find that the defendant had an intention at the time of the departure of defendant and Della Mae Gilyard and Doris Ann Murray from the City of Seattle, to place said girls in a house of prostitution or to use them for the purpose of debauchery or other immoral purposes.

Instruction No.—

You are instructed that the defendant cannot be found guilty of the offense charged herein and your verdict should be that he is not guilty if you find that the interstate transportation of Della Mae Gilyard and Doris Ann Murray was not planned and made for the purpose of prostitution, debauchery and other immoral purposes.

Instruction No.—

You are instructed that incidental sexual intercourse, not the purpose of the trip, is not sufficient to warrant the conviction of the defendant herein, unless you find that the purpose of the trip was to

place Della Mae Gilyard and Doris Ann Murray in a house of prostitution or that the purpose of the trip was for debauchery or other immoral purposes.

[Endorsed]: Filed October 29, 1952.

[Title of District Court and Cause.]

PLAINTIFF'S REQUESTED
INSTRUCTIONS

It is requested that the Court give instructions on the following subjects:

- Presumption of Innocence
- Intent
- Evidence
- Reasonable Doubt
- Credibility
- Statements by Counsel
- Conclusion

Instruction No.—

The statute under which this defendant is charged reads as follows:

“Whoever knowingly transports in interstate commerce * * * any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice” shall be punished.

To convict the defendant of this charge it will be necessary for you to find from the evidence, beyond a reasonable doubt, as follows:

1. That the defendant knowingly transported Della Mae Gilyard and Doris Ann Murray from Seattle, Washington, to San Francisco, California, and

2. That such transportation was for the purpose of prostitution or debauchery or other immoral purposes.

If you are convinced, beyond a reasonable doubt, as I will hereafter define that term for you, it will be your duty to convict, but if you do not so find from the evidence, it will be your duty to acquit.

Instruction No.—

If you find from the evidence that the witnesses Della Mae Gilyard and Doris Ann Murray were prostitutes or were persons who engaged in immoral practices, this finding by you is immaterial to the case, for you should not concern yourselves with whether or not they should be punished for violating the State law, inasmuch as that is a matter solely for the State authorities and over which this Court has no control and no jurisdiction. The only jurisdiction conferred upon the Federal Government is when a woman or a girl is transported in interstate commerce for the purposes about which you have hertofore been instructed. In other words, the basis of the Federal Government's jurisdiction is interstate commerce, and when that element is absent the Federal Government has no jurisdiction.

Instruction No.—

You are instructed that the Government need not prove that acts of prostitution actually occurred under the charge in this indictment, but it is sufficient for the Government to prove that the defendant intended that the victims in this case, to wit, Della Mae Gilyard and Doris Ann Murray, should engage in prostitution when they reached San Francisco, California, and whether or not Della Mae Gilyard or Doris Ann Murray did actually so engage themselves is not material to this charge.

Instruction No.—

In order for you to convict the defendant of the charge contained in the indictment, it is not necessary for the Government to prove, nor for you to find, that the defendant accomplished his purpose of having Della Mae Gilyard and Doris Ann Murray engage in prostitution, debauchery or other immoral practices after arriving in San Francisco, California, if you find, beyond a reasonable doubt, from all the evidence that that was the intent of the defendant prior to the commencement of the interstate journey.

It is sufficient if you find from the evidence, beyond a reasonable doubt, that the defendant persuaded, induced or coerced Della Mae Gilyard and Doris Ann Murray to go from Seattle, Washington, to San Francisco, California, for any one or more of these purposes, and if you do so find, it is your duty to convict the defendant.

[Endorsed]: Filed October 29, 1952.

[Title of District Court and Cause]

VERDICT

We, the jury in the above-entitled cause, find the defendant, James Edward Brown, is guilty to Count I as charged in the Indictment.

/s/ JOSEPH G. BENNETT,
Foreman.

[Endorsed]: Filed October 30, 1952.

United States District Court, Western District
of Washington, Northern Division
No. 48568

UNITED STATES OF AMERICA,
Plaintiff,

vs.

JAMES EDWARD BROWN,
Defendant.

JUDGMENT, SENTENCE AND
COMMITMENT

On this 31 day of October, 1952, the attorney for the Government and the defendant, James Edward Brown, appearing in person and being represented by R. Pat Guimont, his attorney, the Court finds the following:

That prior to the entry of his plea, a copy of the Indictment was given the defendant and the defend-

ant entered a plea of not guilty and a trial was held, resulting in a verdict of guilty as to Count I thereof; that by order of this Court the presentence investigation has been dispensed with; now, therefore,

It Is Adjudged that as to Count I the defendant, James Edward Brown, has been convicted by jury verdict and was found guilty of the offense of violation of Section 2421, Title 18, U.S.C., as charged in Count I of the Indictment, there being only one count in the Indictment herein, and the Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged and Ordered that as to Count I the defendant, James Edward Brown, be committed to the custody of the Attorney General of the United States for confinement in the United States Penitentiary at McNeil Island, Washington, or in such other like institution as the Attorney General of the United States or his authorized representative may by law designate, for the period of Four (4) Years and Six (6) Months.

It Is Further Ordered that the Clerk of this court deliver a certified copy of this Judgment, Sentence and Commitment to the United States Marshal or other qualified officer, and that said copy serve as the commitment of the defendant.

Done in Open Court this 31st day of October, 1952.

/s/ JOHN C. BOWEN,

United States District Judge.

Presented by:

/s/ J. CLARK DENNIS,
United States Attorney.

(Vio. White Slave Traffic Act.)

[Endorsed]: Filed October 31, 1952.

[Title of District Court and Cause.]

NOTICE OF APPEAL.

Name and address of appellant: James Edward Brown, in custody.

Name and address of appellant's attorney: None.

Offense: That on or about August 15, 1952, James Edward Brown, did knowingly and unlawfully transport in interstate commerce, to wit, from Seattle, in the Northern Division of the Western District of Washington, to San Francisco, State of California, Della Mae Gilyard and Doris Ann Murray, female persons, for the purpose of prostitution, debauchery and other immoral purposes. All in violation of Title 18, U.S.C., Section 2421.

Concise statement of Judgment and Sentence: Judgment and Sentence entered October 31, 1952, adjudging that defendant had been convicted by jury verdict and is guilty of violation of Section 2421, Title 18, U.S.C., as charged in Count I of the Indictment, and sentencing defendant to confinement in the United States Penitentiary at McNeil Island, Washington, or in such other like institution as the Attorney General of the United States or his authorized representative may by law desig-

nate, for the period of Four (4) Years and Six (6) Months.

I, the above-named appellant, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the above-stated Judgment and Sentence.

Dated, October 31, 1952.

/s/ JAMES EDWARD BROWN,
Appellant.

/s/ MILLARD P. THOMAS,
Witness.

[Endorsed]: Filed November 4, 1952.

[Title of District Court and Cause.]

WRIT OF HABEAS CORPUS
AD TESTIFICANDUM

United States of America,
Western District of Washington,
Northern Division—ss.

The President of the United States of America.

To: The Chief of Police, City of Tacoma, Tacoma,
Washington, Greetings:

In the name of the President of the United States of America, we command you to deliver the body of Willie Mae Braxton, alias Willie Mae Brown, a prisoner in your custody in the City Jail, Tacoma, Washington, to the United States Marshal for the the Western District of Washington, or his Deputy,

who is hereby directed to produce said Willie Mae Braxton, alias Willie Mae Brown, before the above Court at Seattle, Washington, on the 29th day of October, 1952, at the hour of 9:30 a.m. of said day, for the purpose of testifying as a witness in the above-entitled cause at the time and place aforesaid.

It is further ordered that the United States Marshal for the Western District of Washington, shall redeliver the custody of the said Willie Mae Braxton, alias Willie Mae Brown, to the Chief of Police, Tacoma, Washington, when the said Willie Mae Braxton, alias Willie Mae Brown, is discharged as a witness in the above-entitled cause, and the United States Marshal is hereby authorized to incur the necessary expenses connected herewith as provided by law.

Witness the Honorable John C. Bowen, Judge of the United States District Court for the Western District of Washington, and the Seal of said Court this 24th day of October, 1952.

MILLARD P. THOMAS,
Clerk, United States District Court, Western District of Washington.

By /s/ LOIS M. STOLSEN,
Deputy.

Received October 24, 1952.

[Endorsed]: Filed November 7, 1952.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO RECORD ON APPEAL

United States of America,
Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington, do hereby certify that pursuant to the provisions of Subdivision 1 of Rule 11 of the United States Court of Appeals for the Ninth Circuit and Rule 39(b)(1) of the Federal Rules of Criminal procedure, I am transmitting herewith all of the original papers in the file dealing with the above-entitled action and that said papers, (excluding Plaintiff's Exhibit 1 and Defendant's Exhibit A-1) constitute the record on appeal from the Judgment and Sentence of the Court filed Oct. 31, 1952, to the United States Court of Appeals for the Ninth Circuit, to wit:

1. Indictment, filed Sept. 26, 1952.
2. Marshal's Return on Bench Warrant, filed Oct. 9, 1952.
3. Praecipe for subpoena, Gilyard and two (2), filed Oct. 17, 1952.
4. Praecipe for Subpoenas, Wiley and four (4), filed Oct. 20, 1952.
5. Motion to have U. S. Marshal Serve Defendant's Witnesses with subpoenas, filed Oct. 21, 1952.
6. Order requiring the issuance of subpoenas at

the expense of the United States of America, filed Oct. 21, 1952.

7. Marshal's Return on Subpoena, Braxton, filed Oct. 22, 1952.

8. Praecipe for Subpoena duces tecum, Powell, filed Oct. 23, 1952.

9. Praecipe for Subpoena duces tecum, Ford, filed Oct. 23, 1952.

10. Motion for Order Directing Issuance of Writ of Habeas Corpus Ad Testificandum, filed Oct. 24, 1952.

11. Order Directing Issuance of Writ of Habeas Corpus Ad Testificandum filed Oct. 24, 1952.

12. Praecipe for Issuance of Two Certified Copies of the Order Directing Issuance of Writ of Habeas Corpus Ad Testificandum, filed Oct. 24, 1952.

13. Marshal's Return on Subpoenas, Gilyard and one, filed Oct. 29, 1952.

13-A. Defendant's Requested Instructions, filed Oct. 29, 1952.

13-B. Plaintiff's Requested Instructions, filed Oct. 29, 1952.

14. Marshal's Return on Subpoena duces tecum, Powell, filed Oct. 29, 1952.

15. Praecipe for Subpoena, Reynolds, filed Oct. 30, 1952.

16. Praecipe for Subpoena, Devine, filed Oct. 30, 1952.

17. Marshal's Return on Subpoena, Bush and two, filed Oct. 30, 1952.

18. Marshal's Return on Subpoena, Reynolds and one, filed Oct. 30, 1952.

19. Marshal's Return on Subpoena, Odean, not found, filed Oct. 30, 1952.

20. Marshal's Return on Subpoena, Wiley, not found, filed Oct. 30, 1952.

21. Order Directing Discharge from custody of Gilyard and Murray, as material witnesses, filed Oct. 30, 1952.

22. Verdict, filed Oct. 30, 1952.

23. Judgment, Sentence and Commitment, filed Oct. 31, 1952.

24. Marshal's Return on Subpoena, duces tecum, Ford, filed Nov. 3, 1952.

25. Notice of Appeal, filed Nov. 4, 1952.

26. Marshal's Return on Writ of Habeas Corpus Ad Testificandum, filed Nov. 7, 1952.

27. Letter from James Edward Brown to Hon. John C. Bowen, U. S. District Judge, filed Nov. 7, 1952.

28. Order directing United States Marshal shall pay the witnesses who appeared in court, their fees for attendance, filed Nov. 14, 1952.

I further certify that the following is a true and correct statement of all expenses, costs, fees and charges incurred in my office for preparation of the record on appeal in this cause, to wit:

Notice of Appeal, \$5.00, and that said amount has been paid to me by the appellant.

In Witness Whereof I have hereunto set my

In the United States Court of Appeals
for the Ninth Circuit

No. 13679

JAMES EDWARD BROWN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

STATEMENT OF POINTS TO BE RELIED
UPON ON APPEAL.

Pursuant to Rule 19(6) of this Court, the Appellant states and designates the entire and whole contents of the record is necessary for the appeal herein, and intends to rely on all the points set out in the assignment of errors, as well as those set forth hereinafter below:

1. Denial of effective assistance of Counsel.
2. Conflicting and perjurious testimony on the part of prosecution's witnesses.
3. Insufficient time in which to prepare defense.
4. Verdict was inconsistent with evidence and testimony.

The Appellant deems the entire record, as filed in the above-entitled cause, necessary for the consideration of the points relied upon.

/s/ JAMES EDWARD BROWN.

[Endorsed]: Filed June 3. 1953.